HONOURABLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.25158 OF 2004

Dated:16.11.2006

Between

Dulam Sri Durga Malleswar and another.

.....
PETITIONERS

And

The CSR/SI/Arbitrator, the District
Co-Operative Central Bank Limited,
Tadepalligudem, West Godavari
District and three others.

.....RESPONDENTS

HONOURABLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.25158 OF 2004

ORDER:

This writ petition is filed seeking to quash the orders dated 25.03.2004 passed in O.A.No.20 of 2003 on the file of the A.P.Co-Operative Tribunal, Vijayawada, wherein the order dated 04.01.2003 passed by the first respondent in

Claim No.20/2002-03, directing the petitioners herein to jointly and severally pay the third respondent herein a sum of Rs.3,36,874/- with subsequent interest at 17.5% from 01.10.2002 till realisation, was confirmed.

It appears that the petitioners obtained a loan of Rs.2,25,000/- from the third respondent-Bank and except four instalments, they have not paid the remaining instalments. Though initially, the petitioners obtained a certificate under Section-71 of A.P.Co-Operative Societies Act for the over due amounts, but, thereafter the third respondent herein filed an application under Section-61 of the Act before the first respondent. The petitioners requested for supply of certain documents, but without supplying the same, first respondent-Arbitrator passed the award. Aggrieved by the same, the petitioners carried the matter in appeal before the A.P.Co-Operative Tribunal, Vijayawada in O.A.No.20 of 2003. Even before the appellate authority it is the case of the petitioners that certain documents, as requested, were not supplied to them. Therefore, they are not in a position to effectively defend their case. However, the appellate authority held as under: -

> "As seen from the lower court records, notice is given to the appellant by the lower authority under Ex.A-7 calling upon him to pay the entire amount due as on that date. Similarly notice is served on the appellant along with other appellants. Both the appellants engaged an advocate in the lower court by name Sri D.P.P.Prasad, Advocate, Tadepalligudem who filed

> a memo requesting for documents. The appellant counsel finally filed a memo stating that the documents are not supplied. Hence, he is unable to file the objections within 7 days and also cross-examine P.W-1., as the appellants have failed to file their objections for the loan taken by them, the lower authority has no option except passing an award against them. Since it is a loan instalment and the regular instalments are due from the appellant and the loan is recovered under mortgage. Therefore, we cannot find fault with the lower authority since it is passed the award as the appellant failed to pay the due amount and more over the appellant was represented by his advocate and failed to file his objections. As such, we are of the opinion that the lower authority followed the procedure while passing the award against the appellant. Therefore, we decide this point against the appellant."

From the above, it is clear that certain documents as required by the petitioners were not furnished to them and therefore, they could not file their objections within seven days and also cross-examine P.W-1.

In view of the above, I am of the opinion that since certain documents, as requested by the petitioners, were not supplied they failed to file their objections. On that very ground, the order passed by the Arbitrator in Claim No.20/2002-03 dated 04.01.2003 as confirmed by the appellate authority in O.A.No.20 of 2003 dated 25.03.2004 is liable to be set aside.

Accordingly, the writ petition is allowed setting aside the impugned orders and the matter is remitted to the original authority i.e., the first respondent for fresh

consideration, after furnishing the documents as required by the petitioners. It is stated that the petitioners have deposited an amount of Rs.1,00,000/- with the third respondent-Bank The same may be adjusted towards the principal. No order as to costs.

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(C.V.RAMULU, J)

16.11.2006
DR